

## SUBCOMMITTEE: HOUSING/CONSUMER PROTECTION

## HOUSE BILL NO. 1420

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(Patrons Prior to Substitute--Delegates Bourne and Collins [HB 1669])

A BILL to amend and reenact §§ 55.1-1204 and 55.1-1250 of the Code of Virginia, relating to landlord and tenant; charge for late payment of rent; restrictions.

**Be it enacted by the General Assembly of Virginia:****1. That §§ 55.1-1204 and 55.1-1250 of the Code of Virginia are amended and reenacted as follows:****§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.**

A. A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, the term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. The landlord shall offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. Such written rental agreement shall be effective upon the date signed by the parties.

C. If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The provision of this chapter shall be applicable to the dwelling unit that is being rented;
2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of § 55.1-1253;
3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit not to exceed an amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

D. Except as provided in the written rental agreement, or as provided in subsection C if no written agreement is offered, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Except as provided in the written rental agreement, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

E. A landlord shall not charge a tenant for late payment of rent unless such charge is provided for in the written rental agreement. No such late charge shall exceed the lesser of 10 percent of the periodic rent or 10 percent of the remaining balance due and owed by the tenant.

F. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

~~F.~~ G. If the rental agreement contains any provision allowing the landlord to approve or disapprove a sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or

disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is evidence of his approval.

~~G.~~H. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

~~H.~~I. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

~~I.~~J. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

**§ 55.1-1250. Landlord's acceptance of rent with reservation.**

A. The landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55.1-1255, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55.1-1245, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, nothing in this section shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

B. The tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first

return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of such return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, and dismiss the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

D. In cases of unlawful detainer, a tenant may pay the landlord or the landlord's attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. If such payment has not been made as of the return date for the unlawful detainer, the tenant may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, ~~late fees~~ charges, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer to whom the writ of eviction has been delivered to be executed. Any payments made by the tenant shall be by cashier's check, certified check, or money order. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term of the rental agreement.

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